

**FLOODPLAIN REGULATIONS**

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**CHAPTER 1: GENERAL PROVISIONS**

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**1-2: Title:**

These regulations shall be known and cited as the "Ravalli County Floodplain Regulations" or "the RCFR."

**1-3: General Description:**

The RCFR establish special flood hazard districts as overlay districts, establishes standards for avoiding or reducing flood damage and hazards; and describes the administration and enforcement of these provisions.

**1-4: Authority:**

The BCC adopts the RCFR under authority of the Montana Floodplain and Floodway Management Act (Title 76, Chapter 5, MCA).

**1-5: Purposes:**

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A. PROMOTE PUBLIC HEALTH SAFETY AND WELFARE. The RCFR are intended to promote the public health, safety, and general welfare. To that end, the RCFR shall be implemented for the purposes stated in the enabling state legislation, for the purposes stated in Ordinance adopting these RCFR, and for the purposes described herein, including but not limited to the purposes described in the subsections below.

B. The RCFR are also intended to:

- protect human life and health to the greatest extent;
- To ensure prudent use of flood-prone areas;
- To minimize damage to and loss of public facilities and utilities;
- To minimize damage to and loss of private property by requiring minimum flood protection at the time of initial construction or reconstruction;
- To minimize expenditure of public money for costly flood control projects;
- To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- To control the type and location of development within the floodplain and identify lands unsuitable for certain development purposes because of flood hazards;
- To ensure the regulations and minimum standards adopted, insofar as possible, balance the greatest public good with the least private injury;
- To restrict or prohibit uses that are dangerous to health, safety, and property in times of flood, or that cause increased flood heights and velocities;
- To ensure that potential buyers are notified that property is within a 100-year Floodplain and subject to the provisions of the RCFR;
- To ensure that those who develop within a 100-year Floodplain assume responsibility for their actions;
- To prevent unnatural diversion of floodwater to property that is normally flood free;
- To limit filling, grading, dredging and other similar development that may increase erosion, sedimentation, or flood damage; and
- To maintain the normal movement of surface waters, the optimum storage capacity of watersheds, desirable groundwater levels, water quality, and the natural hydrological and ecological functions of wetlands, riparian areas, and other

flood-prone lands.

#### **1-6: Applicability:**

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- (a) *A. Geographic Area.* The RCFR apply to the unincorporated area of Ravalli County.
- (b) *B. Effect on Previously Approved Floodplain Permits.* The RCFR do not apply to or modify a floodplain decision made before the effective date of the RCFR or any extension thereof.
- (c) *C. Effect on Floodplain Applications.* The RCFR apply to all floodplain applications that are submitted for review after the effective date of the RCFR.

#### **1-7 Relationship of the RCFR to Other Regulations.**

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- A. Other Requirements.* In addition to meeting the provisions in the RCFR, proposed projects shall comply with all other applicable local, state, and federal rules or regulations.
- B. Conflicts with Other Regulations.* If the requirements of the RCFR conflict with any other local, state, or federal rule or regulation, the most restrictive requirement or those that impose the highest standard shall control.

#### **1-8: Amendments:**

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- A. [Temporary until codification] The RCFR may be amended by ordinance according to the County's ordinance adopting procedure with the additional procedural requirements in subsection B.
- [After codification] The RCFR may be amended according to the procedure for amending provisions of the Ravalli County Code with the additional procedural requirements in subsection B.
- B. The Board of County Commissioners shall hold at least one (1) public hearing and shall give the required public notice.

#### **1-9: Repeal of Prior Regulations and Resolutions:**

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Upon final adoption of these RCFR, all prior floodplain regulations and resolutions are repealed except any existing fee schedule and floodplain maps or designations shall remain in effect until repealed or replaced.

#### **1-10: Abrogation:**

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The RCFR do not repeal or impair any existing easements,

covenants, or deed restrictions duly recorded in the public records of the County. However, where the RCFR impose greater restrictions, the RCFR shall prevail.

**1-11: Severability: [Temporary until codification]**

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If a court of competent jurisdiction holds that a part(s) of the RCFR is invalid for any reason, the validity of the remaining portions shall continue in full force and effect.

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## CHAPTER 2: INTERPRETATION, CONSTRUCTION, AND DEFINITIONS

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2-2: General Description:

This Chapter describes the rules that will be used to interpret the provisions of the RCFR and defines certain terms that are used.

## 2-3: General Rules of Construction:

A. Generally. In the application of the RCFR, all provisions, terms, and phrases shall be construed so that the true intent and meaning of the RCFR may be carried out.

**B. Consistency with County Growth Policy.** Nothing in the RCFR shall be construed to authorize development that is inconsistent with the Growth Policy, as may be adopted or amended.

C. *Consistency with Zoning Regulations.* Nothing in the RCFR shall be construed to authorize development that is inconsistent with zoning or similar land use regulations, as may be adopted or amended.

D. *Minimum Standards.* The interpretation and application of any provision of the RCFR shall be held to be the minimum requirement adopted for the purposes of the RCFR.

E. *Not to Repeal Other Powers.* Nothing in the RCFR shall be construed to limit or repeal any other power granted by state or federal law.

## 2-4: Internal Conflicts:

A more specific provision of the RCFR shall be followed in lieu of a more general provision that may be more lenient than or in

conflict with the more specific provision. When it is not clear which provision is more specific, the provision that, in the opinion of the Floodplain Administrator or the BCC, best implements the purposes of the RFCR shall prevail.

## **2-5: Graphics and Illustrations:**

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**A. PURPOSE.** Graphics and illustrations are included to help the reader visualize the meaning of the text and are to be interpreted in a manner that best implements the purposes of the RFCR.

**B. CONFLICTS.** In case of any difference of meaning, interpretation, or implication between the text and any graphic, illustration, the provision shall be interpreted to best implement the purposes of the RFCR.

**C. Effect of Deficiency.** No provision shall be held invalid by reason of any deficiency in any graphic, illustration, heading, reference, or statutory citation.

## **2-6: References, and Statutory Citations:**

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**A. PURPOSE.** References and statutory citations are included where the RFCR is related to or affected by a state or local law.

**B. AMENDMENTS.** A provided reference or citation shall refer to such reference or citation as may be amended from time to time, and if such reference or citation has been renumbered, then the new numbering shall be considered to be incorporated into the RFCR reference or citation.

**C. CONFLICTS.** If a provided reference or citation conflicts with the RFCR provision it is contained in, the RFCR provision shall apply unless the law requires otherwise.

**D. [TEMPORARY UNTIL CODIFICATION] HEADINGS.** Headings and subheadings are included to improve the readability of the RFCR and are intended to help the reader quickly find the information readers are looking for. Any provision shall be interpreted according to the provision text, not by any heading or subheading.

## **2-7: Delegation of Authority:**

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Whenever a provision of the RFCR requires an elected official, department supervisor, or some other county employee to do some act or perform some duty, it is to be construed to authorize that individual to designate, delegate, contract with, or authorize another qualified person to perform the required act or duty, unless otherwise specified.

## **2-8: Responsibility for Interpretation:**

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In the event that any question arises concerning any provision or the application of any provision of the RCFR, the Floodplain Administrator shall be responsible for such interpretation and shall look to the overall intent of the RCFR and the Growth Policy, as may be adopted or amended, for guidance. The Floodplain Administrator shall provide such interpretation in writing to the applicant upon request and keep a permanent record of said interpretation.

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**2-9: Computation of Time:**

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When a time period is specified in the RCFR, the first day shall be the first day after the event that triggers the time clock to start. For example, if a decision is to be made within 60 days, the time clock starts the day after the application has been deemed sufficient.

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**2-10: INTERPRETATION OF FLOODPLAIN BOUNDARIES:**

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**A. FLOOD FRINGE BOUNDARIES.** The adopted floodplain maps show the general location of the Flood Fringe. The exact location of the Flood Fringe boundary is where the Base Flood Elevation at any given cross-section intersects the natural ground surface.

**B. FLOODWAY BOUNDARIES.** The adopted floodplain maps generally show the location of the Floodway. In some circumstances where no Flood Fringe exists, the Floodway boundary may need to be verified by information contained within the Ravalli County Flood Insurance Study.

**C. ADDITIONAL INFORMATION MAY BE REQUIRED.** The Floodplain Administrator may require elevation information determined by a qualified engineer or land surveyor or other information as needed for any development that the Floodplain Administrator believes may be subject to the RCFR. (See ARM 36.15.501(6)).

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**2-11: General Rules of Interpretation:**

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**A. GENERAL RULES.** In the interpretation of the RCFR, the rules in the following subsections shall be observed, unless such interpretation would be inconsistent with the text.

**B. GENDER.** Words of the masculine gender include the feminine and neuter and vice versa.

**C. SINGULAR AND PLURAL WORDS.** Unless the context clearly indicates otherwise, words in the singular include the plural and vice versa.

**D. TENSE.** Unless the context clearly indicates otherwise, words in the present tense include the past and future tense and the future tense includes the present tense.

**E. SHALL OR WILL.** The word "shall" or "will" is mandatory.

**F. MAY OR SHOULD.** The word "may" or "should" is permissive, except "may not" is mandatory.

**G. INCLUDE AND INCLUDING.** The word "includes" or "including" shall not limit a provision to the specific examples, but is intended to extend its meaning or application to all other instances or circumstances of like kind or character.

**H. SUCH AS.** The phrase "such as" shall not limit a term or provision to the specific examples, but is intended to extend its meaning or application to all other instances or circumstances of like kind or character.

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**2-12: General Definitions:**

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*Words and Terms Not Defined.* Unless specifically defined in this section, words or phrases used in the RCFR shall be as defined in the Ravalli County Code, if applicable, or defined by the following sources according to the definitions in Title 76 Chapter 5 (including section 76-5-103, MCA); according to the definitions in Administrative Rules of Montana Rule 36.15 (including ARM 36.15.101); and according to federal floodplain law (including 44 CFR 59.1). If more than one definition in the above list applies, the order of authority shall be as provided by law, if applicable, or the definition most restrictive on development in the floodplain shall apply. Other terms shall be interpreted so as to give them the meaning they have in common usage in the area of floodplain management, and to give the RCFR their most reasonable application.

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**2-13: Defined Terms:**

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For the purpose of the RCFR, certain terms and phrases are defined below and shall have the meaning ascribed to them, except where the context clearly indicates a different meaning:

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**Alteration** means any change or addition to a structure that either increases its external dimensions or increases its potential flood hazard; alteration of a wastewater treatment system shall be as defined in the Wastewater Regulations. (Also see: *Structure*, and in contrast see: *New Construction*, *Remodel* and *Substantial Improvement*)

**Applicant** means a person, or a person's agent, who submits an application as required by the adopted regulations. (Also see: *Person*)

**Artificial Obstruction** means any obstruction which is not natural and includes any dam, diversion, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill or other analogous structure or matter in,



along, across, or projecting into any 100-year Floodplain which may impede, retard, or alter the pattern of flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of water would carry the same downstream to the damage or detriment of either life or property.

**Avoid** means to take an action so that a negative impact does not occur. (In contrast see: *Minimize* and *Mitigate*)

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- B -

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**Bank Stabilization** means any effort to harden the bank of a stream to prevent lateral movement. Such measures include: bio-engineering, native material revetments, rip-rap, bin-walls, barbs, vanes, and many other techniques. (Also see: *Grade Control Structure*)

**Base Flood** means a flood having a one percent (1%) chance of being equaled or exceeded in any given year. A base flood is the same as a flood of 100-year frequency or *100-year Flood*. (Also see: *Flood, 100-year*)

**Base Flood Elevation** means the vertical elevation above sea level to which the waters of a 100-year Flood are expected to rise. Base Flood Elevation is the same as the 100-year Flood elevation.

**BCC** means the Ravalli County Board of County Commissioners.

**Building** means a structure having a roof supported by walls or columns, or other supports intended for the shelter or enclosure of persons, animals, chattels, or property of any kind. (Also see: *Structure*)

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- C -

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**Channelization Project** means the excavation and/or construction of an artificial channel for the purpose of diverting the flow of a stream from its established course.

**Covenant** means a written statement, whether written on the face of the final plat or in a separate instrument recorded with the final plat, that restricts or otherwise regulates the use of property or the kind, character, and location of buildings or other structures which may be located thereon. (Refer to: Title 70 Chapter 17 Part 2, MCA and Section 76-3-306, MCA)

**Cumulative Effects** means a noticeable overall effect which results from the incremental effects of other projects, where the increment from each project may not necessarily be noticeable or considered unacceptable.

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**Day** means a calendar day, unless a working day is indicated, which means a day that the County Planning Department is open to the public. (Also see: *Year*)

**Development** means any activity that is subject to the RCFR.

**Deviation, Major,** means a deviation from the terms of the original floodplain permit, other than a minor deviation. (In contrast see: *Deviation, Minor*)

**Deviation, Minor,** means a deviation from the terms of the original floodplain permit that is necessary in light of technical or engineering considerations first discovered during actual development and not reasonably anticipated during the initial approval process and which does not alter the intent of the approval. (In contrast see: *Deviation, Major*)

**Discourage** means to avoid or hinder an event or some occurrence. (In contrast see: *Encourage*)

**Drainage Detention Structure** means a structure designed to collect and temporarily store stormwater with subsequent gradual release of the stormwater. (In contrast see: *Drainage Retention Structure*)

**Drainage Retention Structure** means a structure designed to collect and prevent the release of a given volume of stormwater by complete on-site storage (In contrast see: *Drainage Detention Structure*)

**Dwelling Unit** means a single unit providing independent and permanent living facilities.

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**Encourage** means to stimulate, foster, or help advance an event or some occurrence. (In contrast see: *Discourage*)

**Enhance** means to improve or increase in value or attractiveness.

**Ensure** means to guarantee or make sure something will happen.

**Establish** means to construct, place, insert, or excavate.

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**Factory-Built Home** means a Dwelling Unit that is (1) wholly or substantially constructed off-site and transported to the building site for assembly and (2) designed to be used on a permanent foundation. Note: The Montana Department of Commerce, Building Codes Bureau, regulates the construction of factory-built homes. A factory-built home bears an orange insignia which certifies that it meets the applicable state statutes and administrative rules in effect at the time of construction. (In

contrast see: *Manufactured Home*, and *Site-Built Home*)

**Fill** means material, from any source (including the subject property), placed that raises the ground above natural grade.

**Finding** means a written conclusion or determination based on evidence which is considered in arriving at a final decision.

**Fish Habitat Structure** means any structure that is designed to create or improve fish habitat. Examples include: random instream boulder cover and bank cover. This term is narrowly construed to exclude any structure which offers fish habitat as a secondary benefit.

**Flood** or **Flooding** means a general and temporary condition of partial or complete inundation of normally dry lands from the overflow of a stream, or the unusual and rapid accumulation or runoff of surface waters from any source.

**Flood, 100-year**, means a flood having a one (1) percent chance of being equaled or exceeded in any given year. A 100-year Flood is the same as a Base Flood. (Also see: *Base Flood*)

**Flood Elevation, 100-Year**, means *Base Flood Elevation*.

**Flood Fringe** means that portion of the 100-year Floodplain outside the limits of the Floodway. (See Figure 2-11-1) (Also see: *Floodplain, 100-year* and *Floodway*)

**Flood Insurance Rate Map (FIRM)** means the map prepared and adopted by the Federal Emergency Management Agency (FEMA) that delineates both the 100-year Floodplain and the risk premium zones. (Also see: *100-year Flood*)

**Flood Insurance Study** means the report prepared and adopted by the Federal Emergency Management Agency (FEMA) that shows flood profiles as well as the flood boundary/Floodway map and the water surface profiles.

**Floodplain, 100-year**, means the area generally adjoining a body of water that would be covered by water of the Base Flood except for sheetflood areas that receive less than one (1) foot of water per occurrence and are considered Zone B areas by the Federal Emergency Management Agency. The 100-year Floodplain consists of the Floodway and the Flood Fringe. (See Figure 2-11-1) (Also see: *100-year Flood*, *Floodway* and *Flood Fringe*)

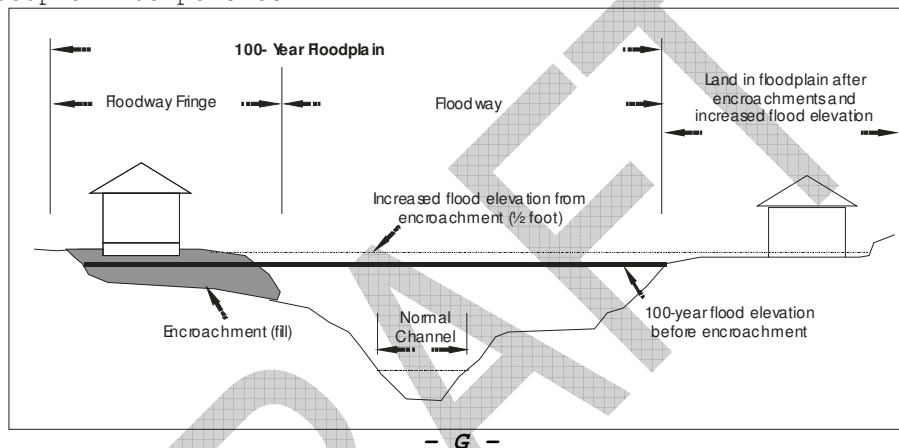
**Floodplain** means 100-year Floodplain.

**Floodplain Island** means an area of land that is above the Base Flood Elevation and is wholly surrounded by an area of land that is below the Base Flood Elevation. (Also see: *Base Flood Elevation*)

**Flood Wall** means a wall constructed of water-resistant material around the perimeter of a property and extending above the design flood elevation to keep floodwaters away from the property.

**Floodway** means the channel of a stream and the adjacent overbank areas that must be reserved in order to discharge the Base Flood without cumulatively increasing the water surface elevation more than one-half (1/2) foot. (See Figure 2-11-1) (Also see: *Floodplain, 100-year* and *Flood Fringe*)

Figure 2-11-1  
Floodplain Components



**Grade Control Structure** means a structure consisting of stones, rocks, or analogous material that is placed on the bed of a stream to control or otherwise influence the grade of the stream. (Also see: *Bank Stabilization*)

**Growth Policy** means a plan of Ravalli County adopted pursuant to Section 76-1-103, MCA.

**Hazard** means any condition, either natural or man-made, which presents a tangible danger to the public health, safety, and general welfare.

**Hazardous Material** means (1) any hazardous waste; (2) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and the regulations promulgated thereunder; (3) any oil, petroleum products, and their by-products, asbestos, and Polychlorinated Biphenyls (PCB's); and (4) any substance that is or becomes regulated as hazardous by any federal, state or local governmental authority (including but not limited to any material regulated by the "Emergency Planning and Community Right-to-Know Act of 1986" 42 USC 1101-11050, as

amended). (Also see: *Hazardous Waste*)

**Hazardous Waste** means a waste or combination of wastes that because of its quantity, concentration, or physical, chemical, or infection characteristics, may (1) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed. The term does not include substances governed by Title 82, Chapter 4, Part 2, MCA. (Source: 75-10-403, MCA) (Also see: *Hazardous Material*)

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**Instream Structure** means a structure of any type placed within the ordinary high water mark of streams for irrigation purposes, for controlling stream bank erosion, or for controlling the movement of the stream channel. This includes but is not limited to rip-rap, barbs, drop structures, dikes, and similar structures. (Also see: *Structure*)

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- L -

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**Land Use** means, as the context would indicate, (1) the development that has occurred on the land, (2) development that is proposed on the land, or (3) the use that is permitted on the land under an adopted and legally enforceable regulatory framework.

**Land Use, Accessory**, means any land use that is clearly incidental and subordinate to and customarily found with a principal land use. (Also see: *Land Use* and in contrast see: *Land Use, Principal*)

**Land Use, Principal**, means the dominant land use of a parcel of land. (Also see: *Land Use* and in contrast see: *Land Use, Accessory*)

**Land Use, Water-Dependent**, means any land use that is by necessity dependent upon access to a water body for: water-borne transportation, including ports or marinas, recreation, electrical generating facilities, or water supply. (Also see: *Land Use*)

**Letter of Map Amendment or LOMA** means an amendment that the Federal Emergency Management Agency makes to a community's Flood Insurance Rate Map(s). LOMA's are generally issued when properties have been inadvertently included in the floodplain. (Also see: *Letter of Map Revision*)

**Letter of Map Revision or LOMR** means a revision that the Federal Emergency Management Agency makes to a community's Flood Insurance Rate Map(s). A LOMR is generally based on the implementation of physical measures that affect the hydrologic or

hydraulic characteristics of a flooding source and thus results in the modification of the floodplain. (Also see: *Letter of Map Amendment*)

**Levee** means a man-made embankment, usually earthen, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water to provide protection from temporary flooding.

**Lowest Floor** means any floor used for living purposes, storage, or recreation or that could be converted to such a use (ARM 36-15-101(14)).

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**Maintain** means to support, keep, and continue in an existing state or condition without decline.

**Manufactured Home** means a structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities and includes but is not limited to park trailers, travel trailers, and other similar vehicles. (ARM 36.15.101) (In contrast see: *Factory-Built Home*, and *Site-Built Home*)

**Market Value** means the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's-length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which is capable of being used. (Source: 2, modified)

**Mean Sea Level** means the North American Vertical Datum of 1988 or other datum to which Base Flood Elevations are referenced.

**Minimize** means to take an action so that no other alternative would result in a lesser impact. (In contrast see: *Avoid* and *Mitigate*)

**Mitigate** means to take an action to offset or rectify a negative impact by repairing, rehabilitating, or restoring the affected environment. (Also see: *Avoid* and *Minimize*)

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**Native Material Revetment** means bank stabilization using root wads, logs, boulders, vegetation plantings, and sod mats. This type of design improves visual and biological values as opposed to some of the more "hard" approaches such as rip-rap. (Also see: *Bank Stabilization*)

**New Construction** means the construction of a new structure that is not part of an existing structure. (Also see: *Structure* and in

contrast see: *Alteration, Remodel and Substantial Improvement*)

**Nonconforming Structure** means any structure that does not conform with the building standards contained within the RCFR. (Also see: *Structure*)

**Nonconforming Use** means any land use that does not conform with the use standards contained within the RCFR. (Also see: *Land Use*)

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**Park** means an area dedicated to recreational uses in perpetuity.

**Permanent Foundation** means a continuous wall around the perimeter of a building composed of solid concrete or mortared concrete blocks or a series of concrete piers spaced around the perimeter of a building. Permanent foundation design techniques for manufactured homes shall follow the recommendations in FEMA Publication #85. (Also see: *Building and Structure*)

**Permit** means a written governmental authorization allowing the holder to take action not otherwise allowed.

**Person** means any individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

**Practice of Engineering** means any service or work as fully described in Section 37-67-101(6) MCA. (Also see: *Professional Engineer*)

**Preserve** means to save from change or loss and reserve for a special purpose.

**Professional Engineer** means a person licensed in conformance with Title 37, Chapter 67, MCA, to practice engineering in the state of Montana. (Source: 76-3-103, MCA)

**Professional Land Surveyor** means a person licensed in conformance with Title 37, Chapter 67, MCA, to practice surveying in the state of Montana. (Source: 76-3-103, MCA)

**Public Notice** means the ways in which a governmental body uses or is required to use to formally notify people of a proposed governmental hearing or action.

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**Recreation Vehicle** means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a: (a)

travel trailer; (b) camping trailer; (c) truck camper; or (d) motor home. (See § 50-60-101, MCA.)

**Rip-rap** means a structure consisting of stones or rocks (not concrete) that is placed along the banks or bed of a stream to alleviate erosion. (Also see: *Bank Stabilization*)

**River:** See *Stream*.

**Remodel** means to only change the interior/exterior appearance of a structure, where there is no change in the footprint, and where the change does not constitute *alteration* or *substantial improvement*. (Also see: *Structure* and in contrast see: *Alteration*, *New Construction*, and *Substantial Improvement*)

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**Sheetflooding Areas** means areas subject to a 100-year Flood with depths less than one (1) foot of water per occurrence and are considered Zone B areas by the Federal Emergency Management Agency.

**Site-Built Home** means a *Dwelling Unit* that is constructed on the site on which it will be located. (In contrast see: *Factory-Built Home*, and *Manufactured Home*)

**Site Plan** means a plan, drawn to scale, showing the layout of existing and proposed property lines, easements, structures, uses, utilities, parking areas, streets, signs, buffers, landscaping, adjacent land uses, and other information as required.

**Solid Waste** means all putrescible and non-putrescible wastes as defined in section 75-10-103, MCA.

**Start of Construction** means commencement of clearing, grading, filling, or excavating to prepare a site for construction.

**Stream** means a natural body of running water flowing continuously or intermittently in a channel on or below the surface of the ground.

**Structure** means any permanent or temporary object that is constructed, installed, or placed by man, the use of which requires a location on a tract of record. It includes buildings of all types, bridges, instream structures, storage tanks, fences, swimming pools, towers, poles, pipelines, transmission lines, smokestacks, signs, and similar objects. (Also see: *Instream Structure* and *Building*)

**Substantial Damage** means damage sustained by a building or structure where the cumulative cost of restoring the building or structure to its condition before damage would equal or exceed fifty (50) percent of the market value of the building or structure before the damage occurred. (Also see: *Building*, *Market*



*Value and Structure)*

**Substantial Improvement** means any repair, reconstruction, or improvement of a *building* or *structure*, the cost of which equals or exceeds fifty (50) percent of the market value of the building or structure either:

- (a) before the improvement or repair is started, or
- (b) if the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this definition, substantial improvement is considered to occur when the first construction to any wall, ceiling, floor or other structural part of the building commences.

The term does not include:

- (a) any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions, or
- (b) any alteration of a structure listed on the National Register of Historic Places or state inventory of historic places.

(Also see: *Building and Structure* and in contrast see: *Alteration and New Construction*) (Note: In contrast to *alteration*, a *substantial improvement* is based on the same footprint of the building that existed prior to the *substantial damage*.)

**Suitable Fill** means fill material which is stable, compacted, well graded, pervious, not adversely affected by water and frost, devoid of trash or similar foreign matter, devoid of tree stumps or other organic material, and is fitting for the purpose of supporting the intended use and/or permanent structure.

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**Tract of Record** means land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the office of the clerk and recorder, as of the effective date of the RCFR, or amendment thereto as the context would indicate. (Source: 76-3-103, MCA, modified) (Also see: *Clerk and Recorder*)

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**Variance** means a grant of relief from the strict application of a rule or regulation that would permit development in a manner otherwise prohibited.

**Violation** means the failure of development to comply with applicable regulations. (Also see: *Development*)

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**Wastewater Regulations** or **Wastewater Regs** means the Ravalli County Subsurface Wastewater Treatment and Disposal Regulations as may be amended from time to time.

**Wastewater Treatment System** means a system that receives wastewater for purposes of treatment, storage, or disposal. The term includes, but is not limited to, pit privies and experimental systems. (Source A.R.M. 17.36.912.)

**Wastewater System, Public,** means a Wastewater Treatment System that serves ten (10) or more families or twenty-five (25) or more persons for at least 60 days a year. (Source § 76-4-102, MCA.)

**Water Right** means a right to use water that is protected under Montana law. (See Title 85, Chapter 2, MCA)

**Wetland** means those ecological entities so defined by the current edition of the "Federal Manual for Identifying and Delineating Wetlands." (Also see: *Riparian Area*)

**Written or In Writing** means any representation of words, letters or figures, whether by printing or otherwise.

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**Year** means 365 days, unless otherwise indicated. (Also see: *Day*)

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**CHAPTER 3: ADMINISTRATION AND PROCEDURES**  
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**3-1: TABLE OF CONTENTS:**

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### **3-2: GENERAL DESCRIPTION:**

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This Chapter describes the procedure and requirements to submit and review applications for floodplain projects that are subject to public review.

### **3-3: FINDINGS:**

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**A. FINDINGS.** The BCC makes the findings in the following subsections.

**B. PROCEDURAL REQUIREMENTS.** Excessive procedural requirements add unnecessary costs to development.

**C. RIGHT TO KNOW.** The public, adjacent landowners, affected agencies, and substantially affected local units of government have a right to know about proposed floodplain projects and have meaningful participation in the review process. (See: Title 2, Chapter 3, Part 1, MCA, and Montana Constitution Article II, Section 8)

**D. WRITTEN FINDINGS.** Written findings should accompany every floodplain decision to serve as a permanent record documenting the reasons for approval or denial and the conditions of approval.

**E. UNMITIGATED EFFECTS GROUNDS FOR DENIAL.** In most cases, negative effects of a project can be avoided, minimized, or mitigated by the applicant. However, there may be instances where unmitigated effects are grounds for denial.

**F. MITIGATION AGREEMENT.** Despite every attempt by the Floodplain Administrator and the applicant to ensure that projects do not affect surrounding property owners and the function/stability of the stream, it is possible that such a result could occur. Therefore, it is reasonable to impose as a condition of approval a requirement that the applicant file a mitigation agreement with the Clerk & Recorder.

**G. MONITORING AGREEMENT.** New technology and design approaches, especially with instream structures, are being developed that do not have sufficient "track record" and as such are experimental.

Given this fact, is it very difficult to determine the effectiveness of these types of projects and effects on surrounding property owners and the function/stability of the stream. Therefore, it is reasonable to impose as a condition of approval a requirement that the applicant file a monitoring agreement with the Clerk & Recorder.

**H. SIMPLIFIED PROCESS.** In cases where flood waters are threatening life and property and constitutes an unexpected emergency, a simplified process is needed to issue permits, provided all of the development standards are satisfied.

**3-4: PURPOSES:**

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The purposes of this chapter are to promote the public health, safety, and general welfare and to:

- adopt review procedures and requirements;
- provide expeditious review of applications;
- encourage public participation during the review process;
- avoid, minimize and/or mitigate the negative effects of floodplain projects on the public and surrounding landowners;
- permit, but not encourage, nonconformities to continue until such time as they are removed, discontinued, altered or substantially improved; and
- ensure that nonconformities that are removed, discontinued, altered or substantially improved shall conform to all provisions of the RCFR. |

Comment [e1]: Add substantial damage?

**3-5: Floodplain Administrator:**

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**A. DESIGNATION OF FLOODPLAIN ADMINISTRATOR.** The BCC shall designate the Floodplain Administrator.

**B. MAINTENANCE OF RECORDS.** The Floodplain Administrator shall maintain such files and records as may be necessary to document nonconforming uses, flood elevations, flood proofing and elevation certifications, fee receipts, the issuance of permits, agendas, minutes, records of public meetings and any other matters related to floodplain management in Ravalli County. Such files and records shall be open for public inspection. In matters of litigation, Ravalli County Attorney may restrict access to specific records.

**3-6: PERMIT REQUIRED AND EMERGENCY AUTHORIZATION:**

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**A. GENERALLY.** Activities or uses which require the issuance of a permit, including the expansion or alteration of such uses shall not be initiated, established or undertaken until the Floodplain Administrator has issued a permit.

**B. EMERGENCY AUTHORIZATION FOR PUBLIC PROJECTS.** The Floodplain Administrator, or designee, may issue an emergency authorization without adhering to the public notice provisions in the RCFR for emergency repair and replacement of severely damaged public transportation facilities, public water and sewer facilities, and flood control when it can be shown by the applicant that an unexpected emergency does exist.

**C. EMERGENCY AUTHORIZATION FOR PRIVATE PROJECTS.** The Floodplain Administrator, or designee, may issue an emergency

authorization for stream projects without adhering to the public notice provisions of the RCFR when it can be shown by the applicant that an unexpected emergency does exist and that land or structures are being threatened.

**D. ORAL AUTHORIZATION.**

1. Authorization to undertake emergency repair and/or replacement work may be given orally in the Floodplain Administrator's discretion if the Floodplain Administrator feels that a written authorization would unduly delay the emergency work.
2. Oral authorization must be followed by a written authorization describing the emergency condition, and the type of emergency work agreed upon, and stating that an oral authorization had been previously given.
3. All work must comply with all of the development standards.

**E. OTHER APPROVALS.** The applicant is responsible for obtaining any applicable emergency approvals from other agencies before commencing an emergency project.

**F. POST EMERGENCY PERMIT APPLICATION REQUIRED.** Within 30 days of initiating the emergency action, a person who has undertaken an emergency action must submit a Floodplain Permit Application that describes what action has taken place during the emergency and describe any additional work that may be required to bring the project in compliance with the RCFR. Upon review of the permit application, the Floodplain Administrator may require modification or removal of the emergency project in order to meet the approved permit requirements.

**3-7: APPLICATION AND REVIEW PROCEDURE:**

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**A. PRE-SUBMITTAL MEETING (OPTIONAL).** The applicant or the applicant's agent shall meet with the Floodplain Administrator prior to submitting a floodplain permit application to review the project and identify potential issues and to also review applicable regulations and procedures.

**B. SUBMITTAL OF PRELIMINARY FLOODPLAIN PERMIT APPLICATION (OPTIONAL).** The applicant shall submit the preliminary floodplain permit application to the Floodplain Administrator (available at the Ravalli County Planning Department Office).

**C. NOTIFICATION OF REQUIREMENTS FOR FINAL FLOODPLAIN PERMIT APPLICATION (IF APPLICABLE).** Upon receiving the preliminary application, the Floodplain Administrator shall notify the applicant in writing of additional materials that must be submitted with the final application within 15 working days. No further action on the permit application will be taken until the Floodplain Administrator receives the requested materials.

**D. SUBMITTAL OF FINAL FLOODPLAIN APPLICATION.** The applicant shall submit the final application to the Floodplain Administrator.

**E. DETERMINATION OF COMPLETENESS.** Within fifteen (15) working days of submittal, the Floodplain Administrator shall determine whether the application is complete or incomplete and notify the applicant of any deficiencies. If the application is deemed incomplete, the applicant has six (6) months to resubmit the application or forfeit the application fee. The Floodplain Administrator shall take no further steps to process the application until the deficiencies are remedied.

**F. PROVISION OF PUBLIC NOTICE BY THE FLOODPLAIN ADMINISTRATOR.** The Floodplain Administrator shall provide for public notice as specified in Section 3-12.

**G. INTER-AGENCY REVIEW.** The Floodplain Administrator shall forward one (1) copy of the complete application to the Department of Natural Resources and one (1) copy to the Bitterroot Conservation District when the proposed development may impact the bed or bank of a stream.

**H. PUBLIC HEARING.** Depending on the magnitude of the project and the comments from adjoining property owners and the general public, the Floodplain Administrator may require a public hearing.

**I. FLOODPLAIN ADMINISTRATOR DECISION.** Within sixty (60) days after a determination of completeness, the Floodplain Administrator shall review the final application and shall approve the application, approve it with conditions, or deny it based on the criteria as described in this Chapter or request additional information as may be needed to adequately evaluate the application. Failure to act within this time period shall constitute approval by the Floodplain Administrator.

**J. APPLICANT NOTIFICATION OF DECISION.** Within seven (7) days following the decision, the Floodplain Administrator shall mail the floodplain decision to the applicant.

**K. DNRC NOTIFICATION OF DECISION.** The Floodplain Administrator shall send a copy of the decision to the Montana Department of Natural Resources and Conservation, Floodplain Management Section. (See: 36.15.204 (2)(e) ARM)

**L. CERTIFICATION OF PERMIT COMPLIANCE.** Within ten (10) days following completion of the project, the applicant shall provide the Floodplain Administrator with the certification of compliance as required by this Chapter.

**3-8: Basis of Decision:**

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**A. *GENERALLY.*** Decisions to approve, approve with conditions, or deny a floodplain permit application shall be based on whether the application, public comments, or additional information demonstrated that the proposed project:

- meets the standards of the RCFR and the Montana Floodplain and Floodway Management Act (Title 76, Chapter 5, MCA); and
- is consistent with zoning regulations and covenants, if any; and
- is in the public interest.

**B. *REVIEW CRITERIA.*** To determine whether the application meets the minimum standards of the RCFR and fulfills its purposes, the Floodplain Administrator shall consider the following criteria:

1. the danger to life and property due to increased flood heights, increased flood water velocities or alterations in the pattern of flood flow caused by encroachments;
2. the danger that materials may be swept onto other lands or downstream to the injury of others
3. the proposed water supply and wastewater systems, if any, and the ability of these systems to prevent disease, contamination and unsanitary conditions;
4. the susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual owner;
5. the likelihood that the structure or building will be threatened due to its proximity to the stream or potential lateral movement of the stream;
6. the importance of the services provided by the facility to the community;
7. the requirement of the facility for waterfront location;
8. the availability of alternative locations not subject to flooding for the proposed use;
9. the compatibility of the proposed use with existing development and anticipated development in the foreseeable future;
10. the relationship of the proposed use to an adopted Growth Policy (if any) and floodplain management program for the area;
11. the safety of access to property in times of flooding for ordinary and emergency services;
12. effects of the project on other properties;
13. the effects on water rights;
14. the cumulative effect of the proposed project along with other existing projects; and



15. such other factors as are in harmony with the purposes of the RCFR, the Montana Floodplain and Floodway Management Act, and the National Flood Insurance Program.

**3-9: Contents, Effective Period, Limitations, and Conditions of Floodplain Permit Decision:**

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A. *Contents for Approval.* If the permit application is approved, the decision shall at a minimum include the following:

- (1) A statement that the application is approved.
- (2) A general description of the project.
- (3) Findings for the public interest assessment and that support the required mitigation, if any.
- (4) Findings stating the consistency of the project with the Growth Policy, zoning, and covenants, if any.
- (5) Specifications and requirements for development improvements, if any.
- (6) The procedures and requirements when there is a major or minor deviation from the floodplain permit decision.
- (7) A statement specifying under what conditions the Floodplain Administrator may withdraw the floodplain permit decision.
- (8) How long the floodplain permit decision is valid.
- (9) A statement stating that changes in the RCFR shall not affect the approval and that no additional conditions shall be imposed.
- (10) A statement stating that the floodplain permit decision may be appealed to the BCC.
- (11) Date of the decision.
- (12) A signature block for the Floodplain Administrator.

B. *Contents for Denial.* If the application is denied, the floodplain permit decision shall at a minimum include the following.

1. A statement that the application is denied.
2. A description of the project.
3. Findings for the public interest assessment that support the decision.
4. Findings stating the consistency of the project with the Growth Policy, zoning, if any, and covenants, if any.
5. A statement indicating that the denial does not limit the applicant's ability to resubmit a revised application to the County for consideration.
6. A statement indicating that the floodplain decision may be appealed to the BCC.

7. Date of the decision.
8. A signature block for the Floodplain Administrator.

**D. Imposition of Conditions.** The Floodplain Administrator shall impose conditions on the issuance of a permit as may be necessary to allow a positive finding that the project is in the public interest. In addition, the Floodplain Administrator shall require the applicant to file a mitigation agreement with the Clerk & Recorder's Office if there is a possibility that the project may negatively affect an adjoining property or the function/stability of the river; and/or a monitoring agreement with the Clerk & Recorder's Office for projects that will result in a significant alteration of the river, the project uses experimental designs and materials, and other factors as deemed appropriate.

**E.** Sample forms are available in the Planning Department offices and on the Planning Department's website.

### **3-10 Preliminary Permit Application Form and Content.**

**A. Preparation.** The preliminary application may be prepared by the applicant, registered architect, registered professional engineer, registered land surveyor, or other qualified individual, as appropriate to the project.

**B. Format.** The application, as may be used by the Floodplain Administrator, shall be completed, available in the Planning Department offices and on the Planning Department's website.

### **3-11 Final Application Form and Content.**

**A. Preparation.** The final application shall be prepared by a registered professional engineer, registered land surveyor, and/or registered architect, or other qualified individual, as appropriate to the project. When the project entails the practice of engineering, a professional engineer shall complete the application and certification, if required. Examples of such projects include grade control structures, channel shaping/relocation, water diversions, bridges/culverts, utility lines, levees and floodwalls, river channelization, bank stabilization projects in excess of 200 cumulative feet, and dams.

**B. Required Content.** The final application shall include:

1. An application form (available at the Ravalli County Planning Department Office and on the Planning Department's website).

2. A site plan prepared consistent with the RCFR.
3. A vicinity map showing the location of the subject property and the location and name of adjacent roads and municipal boundaries.
4. The names and complete mailing addresses of all owners of record owning property adjoining the subject property, as identified on the most recent tax rolls of the county.
5. Copies of issued or requested permits where applicable, including but not limited to the following:
  - (a) 404 Permits, pursuant to Section 404 of the Federal Water Pollution Control Act of 1972, 33 U.S.C. 1334;
  - (b) 310 Permit generally issued by the Conservation District or SPA 124 Permit generally issued by the Department of Fish Wildlife and Parks, pursuant to the Natural Streambed and Land Preservation Act and the Stream Protection Act.
  - (c) Short-Term Exemption from Surface Water Quality Turbidity Standards
6. A list of variances, requested or granted, that are relevant to the application.
7. As appropriate, certification by a professional engineer, land surveyor, registered architect, or other qualified consultant, that the proposed project has been designed to be in compliance with the RCFR.

C. *Additional Information May Be Required.* The Floodplain Administrator may require whatever additional information is necessary to determine whether the proposed activity meets the requirements of the RCFR. Additional information may include the following:

1. A hydraulic study documenting probable effect on upstream, downstream, or adjacent property owners caused by the proposed development; or
2. The calculated increase in the 100-year Flood water surface profile caused by the proposed development.

### **3-12 Public Notice.**

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- A. *Landowner Mailed Notice.* The Floodplain Administrator shall mail notice as follows:
1. *Extent of mailing.* A notice describing the proposed project shall be mailed via first-class mail to each property owner of record and each purchaser under contract for deed whose property abuts the subject property. Where the project abuts a road, utility, or ditch right-of-way, notice shall also be given to the next adjoining property owner of record and each purchaser under contract for deed.
  2. *Content of Mailed Notice.* The notice shall include the following information:

- (a) Applicant(s) name
  - (b) Legal description of subject property
  - (c) Name of the entity who will consider the application
  - (d) The deadline for accepting public comment
  - (e) Location where the public can view the application
  - (f) Location map showing the subject property and the names and location of abutting roads
  - (g) The criteria that will be used to evaluate the application.
3. *Time Requirements for Comment Period.* The notice shall show for at least a fifteen (15) day comment period.
  4. *Source of Names and Addresses.* The names of the property owners shall be taken from the latest ad valorem tax toll maintained by the County.
  5. *Effect of Failure to Notify Owner.* The failure of any person required by this section to receive the notice shall not invalidate or otherwise have any effect upon a public hearing or action taken on the application.
  6. *Additional Notice.* Where the applicant is the owner of land not included in the application and the not-included land is part of or adjoins the parcel upon which the request is made, the Floodplain Administrator may require that notices be mailed to additional owners as appropriate.
- B. *Legal Public Notice.* The Floodplain Administrator shall publish public notice consistent with the following provisions:
1. *Time Requirements for Comment Period.* The notice shall allow for at least a fifteen (15) day comment period.
  2. *Content of Notice.* The notice shall include the contents in section 3-12(A)(2)(a) through (e).
- C. *Local Government Notification.* The Floodplain Administrator shall send a written notice to a local unit of government when the project substantially affects that jurisdiction.

### **3-13 Compliance Certification Requirements.**

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- A. *Generally.* To determine that the permit specifications and conditions have been completed, applicants shall furnish the following at the time of an onsite conformance inspection, as appropriate:
1. Certification by a registered professional engineer or registered land surveyor of the actual mean sea level elevation of the lowest floor (including basement) of all new, altered, or substantially improved buildings.
  2. If flood proofing techniques were used for buildings, the mean sea level elevation to which the flood proofing was accomplished must be certified by a professional engineer with demonstrated expertise in structural engineering or licensed architect in the same manner.
  3. Certification shall also be required, for artificial obstructions other than buildings, verifying that the activity was accomplished in accordance with the RCFR and the design plans submitted with the application for the permit activity.
  4. Certification of a flood proofing and/or elevation shall be provided on a standard form available from the Floodplain

Administrator.

5. Flood proofing must be certified by a registered professional engineer or architect that the flood proofing methods are adequate to withstand the flood depths, hydrodynamic and hydrostatic pressures, velocities, impact, buoyancy, and uplift forces associated with the 100-year Flood.

*B. Waiver of Certification Requirements.* The Floodplain Administrator may waive certain certification requirements when an on-site inspection clearly demonstrates that the conditions of the approval were satisfied.

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**3-14: Duration of Permit:**

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A. Except as otherwise extended, an approved floodplain permit shall be valid for 12 months from the date of issuance.

B. The duration for permits for recurring projects such as annual irrigation-related activities may be longer upon the Floodplain Administrator's approval.

C. If the Floodplain Administrator finds that conditions and impacts have not changed and are not anticipated to change within one year, an approved permit may be extended for up to one year upon payment of any applicable fee and any additional County expense.

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**3-15: Revocation of Permit:**

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The Floodplain Administrator may revoke a permit if it is determined that information in the application or otherwise provided by the applicant or applicant's agent is false or inaccurate and that misinformation or mistaken information would materially alter the findings of fact that were issued.

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**3-16: Appeals:**

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A. An applicant or person aggrieved by a decision of the Floodplain Administrator to approve, approve with conditions, or deny a floodplain permit may appeal the decision to the BCC within 30 days after the decision's effective date.

B. An applicant or a person aggrieved by any floodplain decision by the BCC may appeal to the Twenty-First Judicial District Court within 30 days after the BCC's decision. Service of notice of the appeal must be made upon the BCC. (76-5-209, MCA)

C. A person aggrieved may not appeal to the Twenty-First Judicial District until the person has exhausted all administrative proceedings.

**3-17: Emergency Preparedness Planning:**

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In formulating community development goals, the County shall consider the development of a plan for evacuating residents of all manufactured home parks or subdivisions located within flood prone area. This plan should be developed, filed with, and approved by appropriate community emergency management authorities.

**3-18: Enforcement:**

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A. *Notification.* The Floodplain Administrator shall bring any unresolved violation of the RCFR to the attention of the BCC, the County Attorney, and the Montana Department of Natural Resources and Conservation, Floodplain Management Section.

B. *Public Nuisance.* Subject to the exceptions in section 76-5-404(1), any artificial obstruction, nonconforming use, or development project constructed in the 100-year Floodplain in violation of the RCFR is a public nuisance, and the person who caused it is subject to remedies as specified under Sections 27-30-202 and 27-30-204, MCA. (See: 76-5-404(1), MCA.)

C. *General Penalties.*

[TEMPORARY UNTIL CODIFICATION]

Any person who violates any provision of the RCFR shall be guilty of a misdemeanor and punishable by a fine of no more than one-hundred dollars (\$100) or by imprisonment in jail for not more than 10 days or both. Each day's continuance of a violation shall be deemed a separate and distinct offense. (See: 76-5-110, MCA). In addition, the BCC may pursue any other remedy available at law or equity, including but not limited to civil penalty and injunction.

[PERMANENT AFTER CODIFICATION]

Violations of this chapter are punishable as provided in Section 1-4-2 of this Code, and may be prosecuted as a criminal offense under section 7-14-2138, MCA. Each day's continuance of a violation shall be deemed a separate and distinct offense. (See: 76-5-110, MCA.) (Code 2005.)

D. *Section 1316 Declaration.* Under Section 1316 of the National Flood Insurance Act of 1968, flood insurance can be denied to properties in violation of state or local floodplain regulations. In addition to other legal actions, the County may file a Section 1316 Declaration with the Flood Insurance Management Agency that would not permit the violator and subsequent owners to obtain flood insurance.

E. *Additional Penalties.* In addition to the above penalties and actions, the County may seek other rights of action or remedies in equity or at law.

**3-19: Warning and Disclaimer of Liability:**

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The RCFR do not imply that areas outside any identified or delineated floodplain boundaries will be free from flooding or flood damages. The RCFR are not intended to be relied on to determine the likelihood of flooding on any particular tract of record, and the County disclaims any liability relating to any flood damages that may occur.

**3-20: Map Amendments:**

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A. *Flood Insurance Rate Maps.* The Federal Emergency Management Agency may amend the adopted flood insurance rate maps (FIRMS) with a Letter of Map Amendment (LOMA or LOMR-F) or with a Letter of Map Revision (LOMR) as may be appropriate. (Contact the Floodplain Administrator for an application.)

B. *Floodplain Maps.* The Floodplain Administrator may amend the floodplain maps for regulatory purposes only, when survey information submitted by a professional land surveyor, shows that an area is located above the Base Flood Elevation. The Floodplain Administrator shall maintain all such determinations. (Also refer to Section 2-9, which describes the interpretation of the 100-year Floodplain boundaries.)

**3-21: Floodplain Determinations for Flood Insurance Purposes and for Regulatory Purposes:**

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The Floodplain Administrator shall not issue floodplain determinations for flood insurance purposes, but shall, upon request, issue floodplain determinations for regulatory purposes.

(Note: The Floodplain Administrator may provide a list of companies that provide floodplain determination for insurance purposes.)

**3-22: Disclosure Provision:**

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All owners of property in the identified 100-year Floodplain shall notify potential buyers and their agents that such property is subject to the provisions of the RCFR.

**3-23: Major and Minor Deviation:**

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A. *Generally.* Following a floodplain permit decision by the Floodplain Administrator and prior to the expiration of that decision, the applicant may seek to deviate from the approved project as provided for in this section.

B. *Major Deviation.* The Floodplain Administrator shall review a major deviation to determine whether to approve it or to require additional review by affected parties. The Floodplain Administrator shall require additional review when the deviation would create new consequences or consequences of a greater

magnitude not considered during the review of the application. The Floodplain Administrator shall not require additional review when the deviation would lessen or otherwise mitigate the negative impacts that were identified during the review of the application.

C. *Minor Deviation.* The Floodplain Administrator may allow a minor deviation from the approved permit.

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**3-24: Application Gives Consent to Enter Subject Property:**

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Submission of an application authorizes Ravalli County officials, employees, or other designated agents to enter the subject property to verify information in the application and to conduct whatever other site investigations are necessary to review the application. This does not authorize any individual to enter any building on the subject property. Failure to allow access to the property shall be sufficient grounds for denial of the application.

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**3-25: Entry upon Lands:**

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A. As an agent of the BCC, the Floodplain Administrator or designee may make reasonable entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair under the RCFR. (§ 76-5-105, MCA.)

B. Unless written consent is obtained, however, the Floodplain Administrator or designee shall provide written notice of its entry by personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered. If none of these persons can be found, the department or the responsible political subdivision shall affix a copy of the notice to one or more conspicuous places on the property. (§ 76-5-105, MCA.)

C. Whenever possible and practical, the County shall attempt to seek a landowner's consent and cooperation when entry upon land is sought.

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**3-26: Nonconforming Uses, Generally:**

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Within a 100-year Floodplain there may exist structures, uses, and permits which were lawful before the adoption of the RCFR and associated floodplain maps, but which would be prohibited or otherwise controlled by the current RCFR or amendment thereto. This section prescribes how these nonconformities may be continued or made to comply with the RCFR.

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**3-27: Nonconforming Uses Allowed:**

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A. A nonconforming use of land may be continued so long as it remains otherwise lawful, subject to the following subsections.

B. No such nonconforming use shall be enlarged, increased, or



expanded to occupy a greater area of land than was occupied at the effective date of adoption or amendment.

C. No such nonconforming use shall be moved in whole or part to any other portion of the tract of record or parcel occupied by such use at the effective date of adoption or amendment.

D. If any such nonconforming use is discontinued for more than six (6) months any subsequent use of such land shall conform. Resumption of the nonconforming use after such period is prohibited.

### **3-28: Nonconforming Structures:**

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A. A nonconforming structure may be continued so long as it remains otherwise lawful, subject to the following subsections.

B. Nonconforming Dwelling Units may not be altered (see definition of alteration).

C. Should a nonconforming non-residential structure be altered, the altered part of the structure shall conform to the development standards in Table 4-6-1.

D. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the RCFR.

E. Should such a structure be substantially damaged or destroyed, by any means, it may be reconstructed, repaired, or replaced if allowed in the district and meets all applicable development standards.

Comment [e2]: I thought we got rid of this? Is this the most current version?

### **3-29: Unsafe Conditions in a Nonconforming Building:**

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If required to remedy an unsafe condition, a non-conforming building may be strengthened or restored to a safe condition.

### **3-30: Wastewater Permits:**

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1. If the County issued a wastewater (septic) permit for a tract of record that was subsequently determined to be in the 100-year Floodplain through regulatory floodplain map revision, then the septic permit's validity shall be determined according to the following subsections.

2. If -- within two years of the effective date of the RCFR revision that would have required a floodplain permit-- a system was installed, placed in service according to the permit, and connected to a permitted structure/use, the septic permit shall be valid.

3. If -- within two years of the effective date of the RCFR revision that would have required a floodplain permit-- a wastewater system was not installed pursuant to the permit, then the septic permit shall be void.

4. If the County issued a septic permit for a tract of record

that is now located in the floodplain and the wastewater system was installed but was not connected to a septic permitted structure/use and placed in service within two (2) years of the effective date of the RCFR, the septic permit shall be null and void.

### **3-31: Investigation Request**

The Floodplain Administrator either on his or her own initiative, or on the written request of three titleholders of land which may be affected, may investigate possible violations and possible artificial obstructions or nonconforming uses within the area subject to the RCFR. The names and addresses of the persons requesting the investigations shall be released if requested. (§ 76-5-105, MCA)

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4-9: Commercial and Industrial Structures -- Flood Proofing Standards  
4-10: Additional Standards

This Chapter describes which uses are allowed and prohibited in the Floodway and Flood Fringe and the minimum development standards which allowed uses shall meet.

The BCC makes the following findings:

A. The Bitterroot River between Hamilton and Stevensville is a meandering river with multiple channels over very deep alluvial deposits. The shifting and changing of the river channel is a constant feature of the river in this reach. At one location for example, the channel has shifted as much as 1,800 feet. Throughout this reach, meander loops have been destroyed, the channel has switched to an alternate course, and additional braiding has occurred. Based on these observations, the river reach is inherently unstable.

B. Bridge and culvert projects that increase the Base Flood Elevation upstream, cause a backwater, which typically causes gravel deposition above the project which in turn decreases the cross-section through the bridge section or culvert.

The purpose of this Chapter is to promote the public health, safety, and general welfare and to:

- identify which projects are allowed without a permit, allowed with a permit, or prohibited within the 100-year Floodplain.
- establish minimum development standards to protect the floodplain function/stability from inappropriate development and to protect appropriate projects from annual floodwaters.

**4-5: Design Principles:**

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A. *Generally.* Floodplain projects shall be designed to avoid adverse impacts. If avoidance of an adverse impact(s) is not possible, then that adverse impact(s) shall be minimized to an acceptable level and also mitigated in some manner.

B. *Location of Non-Water Related Development.* All development that is not water-dependent shall be located as far away from the river channel as possible. In cases where a portion of the subject property is not located within a floodplain, development that is not water-dependent shall be located in such an area to the fullest extent feasible.

C. *Allowable Increase in Base Flood Elevation: Flood Fringe.* A project in the Flood Fringe may not increase the Base Flood Elevation more than one-half (1/2) foot, unless existing or anticipated development in the area dictates a lesser amount of allowable increase as may be determined by the Floodplain Administrator.

D. *Allowable Increase in Base Flood Elevation in Floodway.* No permit may be issued for a project that increases the Base Flood Elevation in the Floodway to any degree, unless the applicant receives official approval from the Federal Emergency Management Agency.

E. No permit may be issued for any project that will increase the Base Flood Elevation by more than one-half (0.5) foot.

**4-6: Uses Allowed and Prohibited in Floodway and Flood Fringe:**

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A. *Matrix of Uses.* The uses as listed in Table 4-6-1 are allowed without a permit, allowed with a permit, or prohibited in the Flood Fringe and Floodway as listed along with minimum development standards (See: 76-5-401 through 76-5-403, MCA and 36.15.601 through 36.15.903, ARM). Work on structures will fall into one of the following categories:

- (1) Alteration
- (2) New Construction
- (3) Remodel
- (4) Substantial Improvement

B. *Applicability of Development Standards to Alterations, new construction, remodels, and substantial improvements.* The development standards are to be applied as follows:

- (1) Where alterations are allowed by the RFCR, only the alteration (as opposed to the entire structure) must conform to the development standards.

(2) Where new construction is allowed by the RCFR, the entire structure must conform to the development standards.

(3) Where a remodel is allowed by the RCFR, no development standards apply.

(4) Where substantial improvements are allowed by the RCFR, the entire structure must conform to the development standards.

C. *Uses Not Listed.* All uses, structures, buildings, and obstructions not specifically listed are prohibited.

D. *Imposition of Additional Conditions.* In addition to the minimum development standards as listed in Table 4-6-1, the Floodplain Administrator may impose other conditions to allow a positive finding on the review criteria.

#### **4-7: Determination of Effects of Project on Base Flood Elevation:**

To determine the effects of a project, such as a bridge or a culvert, on the Base Flood Elevation, the HEC-RAS computer model, or acceptable equivalent, shall be used. (Note: Before starting any modeling, the applicant should consult with the Floodplain Administrator for the appropriate model.) The computer model should assume some aggradation due to the backwater caused by bridges and culverts.

#### **4-8: Elevation by Fill of Structures in Flood Fringe:**

D. Structures in the Flood Fringe that require elevation above the Base Flood Elevation shall be constructed on suitable fill with a permanent foundation such that the lowest floor (including basement) level is 2 or more feet above the Base Flood Elevation. The suitable fill shall be at a level no lower than the Base Flood Elevation extending 15 feet at that elevation beyond the structure in all directions. Refer to Figure 4-6-1.

E. Where existing streets, utilities, lot dimensions, or additions onto existing structures, make strict compliance with this provision impossible, the Floodplain Administrator may authorize a lesser amount of fill or alternative flood proofing measures as described in Sections 4-9 and 4-10.

#### **4-9: Alternatives to Elevating by Fill for Commercial and Industrial Structures in Flood Fringe -- Flood Proofing Standards:**

A. The new construction and alteration of commercial and industrial structures in the Flood Fringe shall be elevated on fill as prescribed in Section 4-8, or be flood proofed to a level no lower than 2 feet above the Base Flood Elevation as described in the subsections below.

(1) If the structure is designed to allow internal flooding of the lowest floor, use of the floor shall be limited to

such uses as parking, loading areas, and storage of equipment or materials not appreciably affected by flood water. Further, the floors and walls shall be designed and constructed of materials resistant to flooding up to an elevation of 2 or more feet above the Base Flood Elevation. Structures designed to allow internal flooding shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the exit and entry of flood waters.

(2) Structures whose lowest floors are used for purposes other than parking, loading or storage of materials resistant to flooding shall be flood proofed up to an elevation no lower than 2 feet above the Base Flood Elevation. Flood proofing shall include impermeable membranes or materials for floors and walls and watertight enclosures for all windows, doors, and other openings. These structures shall be designed to withstand the hydrostatic pressures and hydrodynamic forces resulting from the base flood.

(3) The new construction, substantial improvement and alteration of commercial or industrial structures floodproofed according to these requirements must be designed and flood proofing measures certified as adequate by a registered professional engineer or architect.

B. The substantial improvement or replacement of existing commercial and industrial structures in the Floodway shall be elevated as described below. These standards shall not apply to alterations.

1. The lowest floor of the structure (including basement) must be at least two (2) feet above the Base Flood Elevation.
2. The structure must be built on a permanent foundation with no fill.
3. If being moved, the structure must be built as far away from the river channel as possible.
4. Manufactured homes proposed for use as commercial or industrial structures must meet standards in FEMA P-85.

#### **4-10 Additional Standards:**

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A. Electrical. All electrical service materials, equipment, and installation for uses permitted with or without a permit in a designated floodplain or Floodway shall conform to the following conditions in the subsections below.:

(1) *Electrical Equipment to be Above Base Flood.* All incoming power service equipment, including all metering equipment, control centers, transformers, distribution and lighting panels, and all other stationary equipment shall be

located at least two (2) feet above the Base Flood Elevation.

(2)*Electrical Equipment Permitted Lower than Base Flood.* Portable or movable electrical equipment may be placed below the Base Flood Elevation, provided that the equipment can be disconnected by a single plug-and-socket assembly of the submersible type.

(3)*Main Service Line.* The main power service line shall have automatically operated electrical disconnect equipment or manually operated disconnect equipment located at an accessible remote location outside the designated floodplain and the Base Flood Elevation.

(4)*Electrical Wiring.* All electrical wiring systems installed at or below Base Flood Elevation shall be suitable for continuous submergence and may not contain fibrous components.

(ARM 36.15.901)

B. Heating. Heating systems for allowed and permitted floodplain and Floodway uses shall conform to the following conditions:

1. *Automatic Control Valves.* Float operated automatic control valves shall be installed in supply lines to gas furnaces so that the fuel supply is automatically shut off when flood waters reach the floor level where the furnaces are located.

2. *Manual Valves.* Manually operated valves that can be operated from a location above the Base Flood Elevation shall be installed in gas supply lines.

3. *Electric Heating Systems.* Electric heating systems shall be installed in accordance with the standards for electrical systems in Section 4-9.A.

(ARM 36.15.902)

C. Plumbing. Plumbing systems for allowed and permitted floodplain and Floodway uses shall conform to the following conditions::

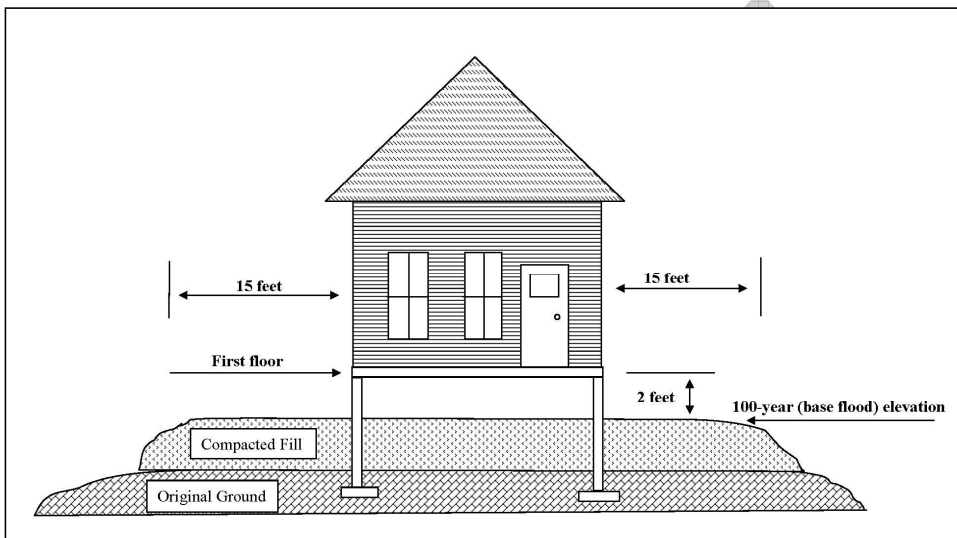
1. *Sewer Lines.* Sewer lines, except those to buried and sealed vaults, shall have check valves installed to prevent sewage backup into permitted structures.

2. *Plumbing Fixtures.* All toilet stools, sinks, urinals, and drains shall be located so the lowest point of possible water entry is at least two (2) feet above the Base Flood Elevation.

3. *Other Requirements.* All components of a plumbing system must comply with the applicable standards in ARM 17.36.918 and the Wastewater Regs.

(ARM 36.15.903)

Figure 4-6-1  
Elevation Standards for Dwelling Units (replacement or substantial improvement) and Commercial and Industrial Structures.





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RA874	Floodway	Flood Fringe	Minimum Standards if Allowable (Also see Section 4-54-4 (8))
Storage or disposal of hazardous materials other than petroleum products	Prohibited	Prohibited	n / a
Storage or disposal of toxic, flammable, or explosive materials other than petroleum products	Prohibited	Prohibited	n / a
Petroleum products	Prohibited	Permit required	Must be stored on compacted fill at least 2 feet above Base Flood Elevation and anchored to a permanent foundation that is properly anchored to the ground. ARM 36.15.703
New wastewater absorption system (including septic drainfields) (See Wastewater Regs)	Prohibited	Prohibited	n / a
Sealed Components of a new or existing wastewater treatment system (including holding tanks and sealed pit privies as permitted under ARM 17.36.916)	Prohibited	Permit required	See Wastewater Regs and ARM 17.36.918.
Alteration of an Existing Wastewater Treatment System (including an increase in effluent flow)	Prohibited	Prohibited except permit required for allowed sealed components	See Wastewater Regs. (For example, it is not permissible to convert a residential structure into a commercial enterprise, which has a higher flow rate than the residential structure. Likewise, it is not permissible to replace a three-bedroom house with a five-bedroom house.)
Replacement System replacing an Existing Wastewater Treatment System (see definitions in Wastewater Regs)	No permit required	No permit required	a. The system must meet the requirements of the Wastewater Regs (see Article 5). b. The system must be located as far from the river channel as practical.
Public Wastewater System	Prohibited	Permit required	(Also see the requirements of the

**Comment [e3]:** What about Holding Tanks?  
Residential? Commercial?

	Floodway	Flood Fringe	Minimum Standards if Allowable (Also see Section 4-5)
Residential uses such as lawns, gardens, parking areas and play areas	No permit required	No permit required	Must not involve fill, excavation, permanent storage of materials / equipment, or structures other than portable structures.
Irrigation and livestock supply wells and monitoring wells	No permit required	No permit required	a. Must not involve fill, excavation, permanent storage of materials / equipment, or structures other than portable structures. b. Located at least five hundred (500) feet from domestic water wells.
Fences, except permanent fences crossing channels	No permit required	No permit required	Must not involve fill or excavation.
Recreational vehicle	No permit required	No permit required	a. It must be on the site for no more than 180 consecutive days, but no more than 30 days unless approved by the Environmental Health Dept. b. It must be fully licensed and ready for highway use - wheels intact and must be attached to the site only by quick disconnect type utilities and security devices. c. It must have no permanently attached additions. d. It must not be the primary residence of the occupant(s).
Bank stabilization (e.g. native revetments, rip	Permit required	Permit required	a. The project must be designed to withstand a 100-year Flood event. b. The project must not

rap, vanes, barbs)			<p>increase the Base Flood Elevation at or near the project.</p> <p>c. The project must not adversely affect adjoining properties.</p> <p>d. The project must not adversely affect the river or river functions.</p> <p>e. The treatment must not extend higher than the natural bank or higher than the Base Flood Elevation.</p>
Grade control structure (e.g. weirs)	Permit required	Permit required	<p>a. The project must be designed to withstand a 100-year Flood event.</p> <p>b. The project must not increase the Base Flood Elevation at or near the project.</p> <p>c. The project must not adversely affect adjoining properties.</p> <p>d. The project must not adversely affect the river or river functions.</p> <p>e. The project allows passage of water craft in low flows.</p> <p>f. The project allows normal movement of fish through the reach.</p>
Channel shaping / relocation	Permit required	Permit required	<p>a. The desired cross-section must be based on information from a suitable reference reach.</p> <p>b. Bank stabilization must be incorporated to ensure short-term and long-term stability of the banks.</p> <p>c. The flood-carrying capacity of the altered or relocated channel must be maintained.</p>
Boat ramp	Permit required	Permit required	The project must be designed to withstand a 100-year Flood event.
Temporary flow reduction for instream	Permit required	Permit required	The work must be done so as to minimize the negative effects on fish.

construction work			
	Floodway	Flood Fringe	Minimum Standards if Allowable (Also see Section 4-5)
Water diversion for irrigation purposes (temporary or permanent)	Permit required	Permit required	<ul style="list-style-type: none"> <li>a. If intended to be permanent, the project must be designed to withstand a 100-year Flood event.</li> <li>b. The project must not increase the Base Flood Elevation at or near the project.</li> <li>c. The project must not adversely affect adjoining properties.</li> <li>d. The project must not adversely affect the river or river functions.</li> <li>e. The project must allow passage of water craft in low flows.</li> <li>f. The project allows normal movement of fish through the reach.</li> </ul>
Fish habitat structure	Permit required	Permit required	None
Pond, gravel pit, drainage retention structure, drainage detention structure, or similar excavation	Permit required	Permit required	<ul style="list-style-type: none"> <li>a. A buffer strip of undisturbed land must be left between the edge of the channel and the edge of the excavation. This buffer strip must be of sufficient width to prevent flood flows from flowing into and/or out of the excavation.</li> <li>b. Excavated material must be disposed of or stockpiled outside the Floodway.</li> </ul>
Bridge, culvert (road and railroad)	Permit required	Permit required	<ul style="list-style-type: none"> <li>a. The crossing must be designed to offer minimal obstruction to flood flow.</li> <li>b. The project must not increase the Base Flood Elevation more than one-half (1/2) foot (See Section 4-5) nor cause a</li> </ul>

			<p>significant increase in flood velocities. Between Hamilton and Stevensville, there must be no increase in the Base Flood Elevation.</p> <p>c. The bottom of the bridge span must be at least two (2) feet above the Base Flood Elevation.</p>
Limited fill (road and railroad embankments not associated with a stream crossing)	Permit required	Permit required	<p>a. Reasonable alternate transportation routes outside the designated Floodway are not available.</p> <p>b. The encroachment must be located as far from the river channel as possible.</p> <p>c. The project does not result in a cumulative increase in Base Flood Elevations of more than one-half (1/2) foot (See Section 4-5) nor have a significant increase in flood velocities.</p>
Fill	Prohibited	Permit required	<p>a. The fill must be needed to comply with the development standards as contained herein.</p> <p>b. The amount of fill must be the minimum necessary.</p>
Utility lines (buried or suspended)	Permit required	Permit required	<p>a. The lowest point of the suspended line must be at least six (6) feet above the Base Flood Elevation.</p> <p>b. Towers and other appurtenant structures must be designed and placed to withstand and minimally obstruct flood flows</p> <p>c. Utility transmission lines carrying gaseous or liquid materials must be buried to a depth at least twice the calculated maximum depth of scour for the base flood. The maximum depth of scour may be determined from any accepted hydraulic engineering methods, but</p>

			<p>the final calculation shall be subject to approval by the Floodplain Administrator.</p> <p>d. All buried utilities other than those listed above must be installed to at least the anticipated scour depth for the base flood.</p>
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	Floodway	Flood Fringe	Minimum Standards if Allowable (Also see Section 4-5)
Material or equipment storage (other than flammable, toxic, hazardous, or explosive materials)	Permit required	Permit required	<p>a. The material or equipment must not be subject to major damage by flooding and must be properly anchored to prevent floatation or downstream movement.</p> <p>b. The material or equipment must be readily removable within the limited time available after flood warning.</p>
Agricultural structure that have a low damage potential, such as a shed, barn, shelter, and hay or grain storage structure	Permit required	Permit required	<p>a. The structure must be anchored to prevent flotation or collapse.</p> <p>b. All electrical facilities must be placed above the Base Flood Elevation.</p>
Domestic water supply well	Permit required	Permit required	<p>a. The well must be located on ground higher than the surrounding area to assure positive drainage away from the well.</p> <p>b. The well casing must be water tight to a distance of at least twenty-five (25) feet below the ground surface.</p>

			<p>c. Water supply and electrical lines must have a watertight seal where they enter the casing.</p> <p>d. All pumps, electrical lines, and equipment must be either submersible or adequately flood-proofed.</p> <p>e. Check valves must be installed on main water lines at wells and all building entry locations.</p>
Buried and sealed vaults for wastewater disposal in public recreational areas (day use only)	Prohibited	Permit required	<p>a. The lowest point of possible water entry into the vault must be at least two (2) feet above the Base Flood Elevation.</p> <p>b. The tank must be anchored to prevent flotation.</p> <p>c. The system must meet other applicable laws and standards (including those administered by the Montana Department of Environmental Quality and the Wastewater Regs.</p>
Campgrounds	Permit required	Permit required	<p>a. Only limited fill for roads, campsite pads, and the like that will not obstruct or divert flood waters are permitted.</p> <p>b. See entry for Recreational vehicles</p> <p>c. Must comply with all other applicable regulation including the Wastewater Regs. requirements.</p> <p>d. The campground spaces (pads) must be located at least 150 feet from the river channel.</p>
Structures accessory to	Permit required	Permit required	<p>a. The structure must not be intended for</p>

Comment [e4]: Holding tank loophole?



permitted uses and not subject to other requirements of the RCFR (such as boat docks, marinas, sheds, picnic shelters, picnic tables, boardwalks, covered RV parking, fishing piers, detached garages, and similar structures)			human habitation. b. The structure must have a low flood damage potential. c. The structure must, insofar as possible, be located on ground higher than the surrounding ground and as far from the river channel as possible. d. Any applicable standards of Sections 4-8 and 4-9 must be met. e. The additional standards of Section 4-10 must be met. d. The structure must be constructed and placed so as to offer minimal obstruction to flood flows and anchored to prevent floatation during a 100-year Flood.
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	Floodway	Flood Fringe	Minimum Standards if Allowable (Also see Section 4-5)
Levee and Flood Wall	Prohibited	Permit required	a. The project must comply with ARM 36.15.505 and ARM 36.15.606. b. The project must be designed and constructed to safely convey a 100-year Flood. c. The project must not result in a cumulative increase in Base Flood Elevations of more than one-half (1/2) foot. (See

			<p><b>Section 4-7)</b></p> <p>d. The proposed levee or flood wall, except those to protect agricultural land, must be constructed at least three (3) feet higher than the Base Flood Elevation.</p>
Dam	Permit required	Permit required	<p>a. It must be designed and constructed in accordance with the Montana Dam Safety Act and applicable safety hazards.</p> <p>b. It must not increase flood hazards downstream, either through operational procedures or improper hydrologic / hydraulic design.</p>
Fish hatchery	Prohibited	Permit required	A berm must be placed around the perimeter of the ponds so that the top of the berm must be at least one (1) foot above the Base Flood Elevation.
Existing Buildings that contain Dwelling Units (excluding manufactured home and mobile home) - New construction, alteration	Prohibited	Prohibited	n/a
Flood Fringe: Existing Buildings that contain Dwelling Units (excluding manufactured home and mobile home) -	See below	Permit required	<p>a. The lowest floor (including basement) must be at least two (2) feet above</p>

Replacement, substantial improvement			<p>the Base Flood Elevation.</p> <p>b. It must be built on suitable fill which is at or above the Base Flood Elevation and extends at least fifteen (15) feet beyond the building in all directions. (See Figure 4-6-1)</p> <p>c. The flood proofing standards of Section 4-9 must be met.</p>
Floodway: Existing Buildings that contain Dwelling Units (excluding manufactured home and mobile home) - Replacement, substantial improvement	Permit required	See Above	<p>a. The lowest floor (including basement) must be at least two (2) feet above the Base Flood Elevation.</p> <p>b. It must be built on a permanent foundation with no fill.</p> <p>c. The flood proofing standards of Section 4-9 must be met.</p>
Manufactured home and mobile home - New construction, alteration	Prohibited	Prohibited	n/a
Flood Fringe: Manufactured home and mobile home - Replacement, substantial improvement	See below	Permit required	<p>a. The lowest floor (including basement) must be at least two (2) feet above the Base Flood Elevation.</p> <p>b. It must be built on a suitable fill which is at or</p>

			<p>above the Base Flood Elevation and extends at least fifteen (15) feet beyond the building in all directions. (See Figure 4-6-1) (Exception - Where the size of the tract of record or space precludes construction on suitable fill, it must be raised on a permanent foundation, with no fill.)</p> <p>c. Manufactured homes proposed for use as commercial or industrial structures must meet the standards in Section 4-9.</p> <p>d. The flood proofing standards of Section 4-9 must be met.</p>
Floodway: Manufactured home and mobile home - Alteration, replacement, substantial improvement	Permit required	See above	<p>a. The lowest floor must be at least two (2) feet above the Base Flood Elevation.</p> <p>b. It must be built on a permanent foundation with no fill.</p> <p>c. Manufactured homes proposed for use as commercial or industrial structure must be elevated and anchored,</p>

			rather than flood proofed. d. The flood proofing standards of Section 4-9.
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	Floodway	Flood Fringe	Minimum Standards if Allowable (Also see Section 4-5)
Commercial or industrial building -New construction, Alteration	Prohibited	Permit required	<p>a. It must be elevated according to standards in Section 4-8, or flood proofed to the standards in Section 4-9.</p> <p>b. It must be as far away from the river channel as practical.</p> <p>c. The additional standards in Section 4-10 must be met.</p> <p>d. Manufactured homes proposed for use as commercial or industrial structures must meet standards in FEMA P-85.</p>
Flood Fringe: Commercial or industrial building - Replacement, substantial improvement	See below	Permit required	<p>a. It must be elevated according to standards in Section 4-8, or flood proofed to the standards in Section 4-9.</p> <p>b. It must be as far away from the river channel as possible.</p> <p>c. The additional standards in Section 4-10 must be met.</p> <p>d. Manufactured homes proposed for use as commercial or industrial structures must meet standards in FEMA P-85.</p>
Floodway: Commercial or industrial building - Replacement	Permit required	See above	<p>a. The building must be elevated according to the standards in Section 4-9.(B). It must be built on a</p>

Substantial improvement			<p>permanent foundation with no fill.</p> <p>c. It must as far away from the river channel as possible.</p> <p>d. The additional standards in Section 4-10 must be met.</p> <p>e. Manufactured homes proposed for use as commercial or industrial structures must meet standards in FEMA P-85.</p>
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- 5-1. Table of contents
- 5-2. General description
- 5-3. Findings
- 5-4. Purpose
- 5-5. Fee schedule
- 5-6. Refund of fee
- 5-7. Waiver of fee

This Chapter states the basis for assessing administrative review fees and lists the various fees associated with the administration of the RCFR.

The BCC makes the following findings:

A. It is in the public interest of all taxpayers of Ravalli County, to assess applicants with a reasonable fee to recover a portion of the actual administrative costs of reviewing and processing application requests.

B. The Montana Floodplain and Floodway Management Act (Section 36.15.204(3)(b), ARM) allows the assessment of reasonable fees.

C. There may be instances where it is appropriate to waive application fees, in whole or in part, on a case-by-case basis as a means to encourage projects that advance legitimate public interests so as not to discourage projects that would benefit the entire community, like parks for example.

The purpose of this Chapter is to identify those administrative fees which are assessed and which may be refunded or waived.

Fees shall be paid at the rates specified in the Planning Department's fee schedule. In determining whether a project is a small-scale project or a large-scale project, the Floodplain Administrator shall consider the scope of the project, anticipated public participation, anticipated number of field inspections and consultations, design difficulty, and the likelihood of follow-up and administration. In Figure 5-5-1, the examples listed for small-scale and large-scale are typical projects.

All fees are non-refundable unless the Floodplain Administrator determines that there is an unanticipated special circumstance.

The Floodplain Administrator may waive, in whole or in part, any administrative fee for a project sponsored by a non-profit community organization or a public agency for a project that would benefit the public interest.

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- 6-1. Table of Contents
- 6-2. General Description
- 6-3. Findings
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- 6-6. Application and Review Procedure
- 6-7. Basis of Decision
- 6-8. Limitations on Issuing a Variance
- 6-9. Imposition of Conditions
- 6-10. Inclusion of Specified Statements for Approved Variances
- 6-11. Application Form and Content
- 6-12. Duration of Variance Approval
- 6-13. Appeals

This Chapter establishes the procedure, conditions, and requirements to issue a variance.

The BCC makes the following findings:

A. Local jurisdictions have the option of granting variances from the RCFR when strict compliance will result in undue hardship and when it is not essential to the public welfare.

B. There could be instances where certain requirements of the RCFR that if enforced would cause unnecessary hardship to individual landowners.

C. Minor deviations from the RCFR may help to alleviate unnecessary hardships without circumventing or undermining the intent of the RCFR.



D. To prevent arbitrary and inconsistent decisions, it is appropriate to adopt specific criteria that will be used to evaluate each variance request.

E. The inability of a landowner to develop to the "highest and best use" because of the RCFR does not necessarily create a hardship.

F. Issuance of a variance does not imply or guarantee approval or conditional approval of a floodplain permit or limit the conditions which may be imposed as a condition of approval.

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**6-4. Purpose.**

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The purpose of this Chapter is to define the procedure, requirements, and criteria that a variance can be granted.

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**6-5. Initiation.**

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A. An application for a variance shall only be submitted by the landowner, or any person having a contractual interest in the property, or an authorized agent, with written authorization from the landowner.

B. When possible, a variance application shall be submitted concurrent with the submittal of a floodplain application.

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**6-6. Application and Review Procedure.**

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A. *Submittal of Application.* The applicant shall submit a completed application to the Planning Office, along with the appropriate application fee as listed in Chapter 5.

B. *Determination of Completeness.* Within ten (10) days, of submittal, the Floodplain Administrator shall determine whether the application is complete or incomplete and notify the applicant of any deficiencies. If the application is incomplete, the applicant has six (6) months to resubmit the application or forfeit the application fee. The Floodplain Administrator shall take no further steps to process the application until the deficiencies are remedied.

C. *Provision of Public Notice.* Following a determination of completeness, the Floodplain Administrator shall provide for appropriate public notice.

D. *Public Hearing.* The BCC shall conduct a public hearing to review the application. The public hearing shall be held more than 14 days after the publication date of the first legal notice.

E. *Decision.* Within sixty (60) days of the determination of completeness (unless the applicant consents in writing to an extension of the review period) the Floodplain Administrator shall notify the applicant that additional information is needed to adequately evaluate the application or the BCC after considering the comments of the general public and after reviewing the staff report, shall make a decision, based on the

criteria as described in Section 6-7, to either:

- (1) approve the application,
- (2) approve the application with conditions, or
- (3) deny the application.

F. *DNRC Review.* Within five (5) days following the decision and if the BCC approves the variance or approves it with conditions, the Floodplain Administrator shall mail the decision to the Department of Natural Resources and Conservation for concurrence, modification, or rejection. (Note: The DNRC has the ability to modify or void the decision of the BCC.)

G. *Application Notification of Decision.* Within seven (7) days following the decision, the Floodplain Administrator shall mail the variance decision to the applicant.

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**6-7. Basis of Decision.**

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The BCC shall not approve the variance application unless it makes a positive finding, based on substantial competent evidence, on each of the following:

- A. There is an undue hardship on the applicant in carrying out the strict letter of the RCFR as distinguished from a mere inconvenience.
- B. The hardship does not directly result from the actions of the applicant.
- C. The variance is the only option available to the applicant to afford relief from the hardship.
- D. The variance is the minimum necessary to afford relief from the hardship.
- E. The granting of the variance will not be detrimental to the public health, safety or general welfare or significantly injurious to other properties.
- F. The variance will not result in increased flood hazards, present additional threats to public safety, be an extraordinary public expense, create a nuisance, or conflict with existing federal, state, or other local laws.
- G. A reasonable alternate location that would not require a variance is not available.
- H. The proposed use would be adequately protected and flood-proofed, if applicable.

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**6-8. Limitations on Issuing a Variance.**

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The following actions shall not be allowed by a variance:

- A. establishment of a use that will increase the Base Flood Elevation by more than one-half (0.5) foot.
- B. establishment of a use otherwise prohibited; and
- C. expansion of a nonconforming use or structure.

**6-9. Imposition of Conditions.**

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In issuing a variance, the BCC may impose such conditions and restrictions as may be necessary to allow a positive finding to be made on any of the foregoing factors, or to minimize the injurious effect of the variance.

**6-10. Inclusion of Specified Statements for Approved Variances.**

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Where applicable, the following statements shall be made in the variance decision to put the applicant and subsequent owners on record regarding actual and potential consequences:

- A. Constructing a building below the Base Flood Elevation will result in increased flood insurance premiums.
- B. The threat to life and property is higher than if the development meets the requirements of the RCFR.

**6-11. Application Form and Content.**

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The application shall include:

- A. An application form (available at the Ravalli County Planning Department Office).
- B. Other information as may be necessary for the Board to make the findings as required in this Chapter.
- C. Any other information the Floodplain Administrator deems necessary to make an informed decision.

**6-12. Duration of Variance Approval:**

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A. An approved variance shall be personal to the landowner of record at the time of its approval, shall not be considered a property right, and shall expire twelve (12) months after the date of approval or earlier by action of the BCC, unless construction has commenced and continues in good faith to completion.

B. An approved variance does not transfer to a new applicant or landowner except as follows: The Floodplain Administrator may approve the transfer of an approved variance to a subsequent landowner or applicant if all the following conditions are met: (1) all circumstances relevant to the variance have not changed significantly since the date the variance was approved; (2) the Floodplain Administrator believes that the purposes of the RCFR will not be impacted by the transfer.

C. An applicant may appeal the Floodplain Administrator's denial of a variance approval to the BCC within 30 days of the Floodplain Administrator's decision.

**6-13. Appeals.**

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An applicant or a person aggrieved by any appeals decision by the BCC may appeal to the Twenty-First Judicial District Court within 30 days after the BCC's decision. Service of notice of the appeal must be made upon the BCC. (76-5-209, MCA)

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